

1 and that the protection it affords from public disclosure and use extends only to the
2 limited information or items that are entitled to confidential treatment under the
3 applicable legal principles. The parties further acknowledge, as set forth in Section
4 12.3, below, that this Stipulated Protective Order does not entitle them to file
5 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
6 that must be followed and the standards that will be applied when a party seeks
7 permission from the court to file material under seal.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
12 it is generated, stored or maintained) or tangible things that qualify for protection
13 under Federal Rule of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
15 (as well as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 "CONFIDENTIAL."

19 2.5 Disclosure or Discovery Material: all items or information, regardless of
20 the medium or manner in which it is generated, stored, or maintained (including,
21 among other things, testimony, transcripts, and tangible things), that are produced or
22 generated in disclosures or responses to discovery in this matter.

23 2.6 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as
25 an expert witness or as a consultant in this action.

26 2.7 House Counsel: attorneys who are employees of a party to this action.
27 House Counsel does not include Outside Counsel of Record or any other outside
28 counsel.

1 2.8 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
4 this action but are retained to represent or advise a party to this action and have
5 appeared in this action on behalf of that party or are affiliated with a law firm which
6 has appeared on behalf of that party.

7 2.10 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 2.12 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is
17 designated as "CONFIDENTIAL."

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20 **3. SCOPE**

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.
26 However, the protections conferred by this Stipulation and Order do not cover the
27 following information: (a) any information that is in the public domain at the time of
28 disclosure to a Receiving Party or becomes part of the public domain after its

1 disclosure to a Receiving Party as a result of publication not involving a violation of
2 this Order, including becoming part of the public record through trial or otherwise;
3 and (b) any information known to the Receiving Party prior to the disclosure or
4 obtained by the Receiving Party after the disclosure from a source who obtained the
5 information lawfully and under no obligation of confidentiality to the Designating
6 Party. Any use of Protected Material at trial shall be governed by a separate
7 agreement or order.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
13 or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
15 including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
19 Party or Non-Party that designates information or items for protection under this
20 Order must take care to limit any such designation to specific material that qualifies
21 under the appropriate standards. The Designating Party must designate for protection
22 only those parts of material, documents, items, or oral or written communications that
23 qualify – so that other portions of the material, documents, items, or communications
24 for which protection is not warranted are not swept unjustifiably within the ambit of
25 this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber or retard the case development process or to

1 impose unnecessary expenses and burdens on other parties) expose the Designating
2 Party to sanctions. If it comes to a Designating Party's attention that information or
3 items that it designated for protection do not qualify for protection, that Designating
4 Party must promptly notify all other Parties that it is withdrawing the mistaken
5 designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this
7 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
8 or ordered, Disclosure or Discovery Material that qualifies for protection under this
9 Order must be clearly so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents,
12 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
13 Producing Party affix the legend "CONFIDENTIAL" to each page that contains
14 protected material. If only a portion or portions of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s)
16 (e.g., by making appropriate markings in the margins). A Party or Non-Party that
17 makes original documents or materials available for inspection need not designate
18 them for protection until after the inspecting Party has indicated which material it
19 would like copied and produced. During the inspection and before the designation, all
20 of the material made available for inspection shall be deemed "CONFIDENTIAL."
21 After the inspecting Party has identified the documents it wants copied and produced,
22 the Producing Party must determine which documents, or portions thereof, qualify for
23 protection under this Order. Then, before producing the specified documents, the
24 Producing Party must affix the "CONFIDENTIAL" legend to each page that contains
25 Protected Material. If only a portion or portions of the material on a page qualifies for
26 protection, the Producing Party also must clearly identify the protected portion(s)
27 (e.g., by making appropriate markings in the margins).

28 (b) for testimony given in deposition or in other pretrial or trial proceedings,

1 that the Designating Party identify on the record, before the close of the deposition,
2 hearing, or other proceeding, all protected testimony.

3 (c) for information produced in some form other than documentary and for any
4 other tangible items, that the Producing Party affix in a prominent place on the
5 exterior of the container or containers in which the information or item is stored the
6 legend "CONFIDENTIAL." If only a portion or portions of the information or item
7 warrant protection, the Producing Party, to the extent practicable, shall identify the
8 protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
10 to designate qualified information or items does not, standing alone, waive the
11 Designating Party's right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the Receiving Party must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
17 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
18 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
19 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
20 Party does not waive its right to challenge a confidentiality designation by electing
21 not to mount a challenge promptly after the original designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
23 process by providing written notice of each designation it is challenging and
24 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
25 has been made, the written notice must recite that the challenge to confidentiality is
26 being made in accordance with this specific paragraph of the Protective Order. The
27 parties shall attempt to resolve each challenge in good faith and must begin the
28 process by conferring directly (in voice to voice dialogue; other forms of

1 communication are not sufficient) within 14 days of the date of service of notice. In
2 conferring, the Challenging Party must explain the basis for its belief that the
3 confidentiality designation was not proper and must give the Designating Party an
4 opportunity to review the designated material, to reconsider the circumstances, and, if
5 no change in designation is offered, to explain the basis for the chosen designation. A
6 Challenging Party may proceed to the next stage of the challenge process only if it
7 has engaged in this meet and confer process first or establishes that the Designating
8 Party is unwilling to participate in the meet and confer process in a timely manner.

9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
10 intervention, the Designating Party shall file and serve a motion to retain
11 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
12 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of
13 the parties agreeing that the meet and confer process will not resolve their dispute,
14 whichever is earlier. Each such motion must be accompanied by a competent
15 declaration affirming that the movant has complied with the meet and confer
16 requirements imposed in the preceding paragraph. Failure by the Designating Party to
17 make such a motion including the required declaration within 21 days (or 14 days, if
18 applicable) shall automatically waive the confidentiality designation for each
19 challenged designation. In addition, the Challenging Party may file a motion
20 challenging a confidentiality designation at any time if there is good cause for doing
21 so, including a challenge to the designation of a deposition transcript or any portions
22 thereof. Any motion brought pursuant to this provision must be accompanied by a
23 competent declaration affirming that the movant has complied with the meet and
24 confer requirements imposed by the preceding paragraph.

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose
27 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
28 expose the Challenging Party to sanctions. Unless the Designating Party has waived

1 the confidentiality designation by failing to file a motion to retain confidentiality as
2 described above, all parties shall continue to afford the material in question the level
3 of protection to which it is entitled under the Producing Party's designation until the
4 court rules on the challenge.

5 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this case
8 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
9 Material may be disclosed only to the categories of persons and under the conditions
10 described in this Order. When the litigation has been terminated, a Receiving Party
11 must comply with the provisions of section 13 below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a
13 location and in a secure manner that ensures that access is limited to the persons
14 authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
16 ordered by the court or permitted in writing by the Designating Party, a Receiving
17 Party may disclose any information or item designated "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to
20 disclose the information for this litigation and who have signed the
21 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

22 (b) the officers, directors, and employees (including House Counsel) of the
23 Receiving Party to whom disclosure is reasonably necessary for this litigation and
24 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this litigation and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

(h) the Mediator over this matter.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this

1 action as “CONFIDENTIAL” before a determination by the court from which the
2 subpoena or order issued, unless the Party has obtained the Designating Party’s
3 permission. The Designating Party shall bear the burden and expense of seeking
4 protection in that court of its confidential material – and nothing in these provisions
5 should be construed as authorizing or encouraging a Receiving Party in this action to
6 disobey a lawful directive from another court.

7 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
8 **PRODUCED IN THIS LITIGATION**

9 (a) The terms of this Order are applicable to information produced by a Non-
10 Party in this action and designated as “CONFIDENTIAL.” Such information
11 produced by Non-Parties in connection with this litigation is protected by the
12 remedies and relief provided by this Order. Nothing in these provisions should be
13 construed as prohibiting a Non-Party from seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery request, to produce
15 a Non-Party’s confidential information in its possession, and the Party is subject to an
16 agreement with the Non-Party not to produce the Non-Party’s confidential
17 information, then the Party shall:

- 18 (1) promptly notify in writing the Requesting Party and the Non-Party
19 that some or all of the information requested is subject to a
20 confidentiality agreement with a Non-Party;
21 (2) promptly provide the Non-Party with a copy of the Stipulated
22 Protective Order in this litigation, the relevant discovery request(s), and
23 a reasonably specific description of the information requested; and
24 (3) make the information requested available for inspection by the Non-
25 Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court
27 within 14 days of receiving the notice and accompanying information, the Receiving
28 Party may produce the Non-Party’s confidential information responsive to the

1 discovery request. If the Non-Party timely seeks a protective order, the Receiving
 2 Party shall not produce any information in its possession or control that is subject to
 3 the confidentiality agreement with the Non-Party before a determination by the court.
 4 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
 5 of seeking protection in this court of its Protected Material.

6 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 8 Protected Material to any person or in any circumstance not authorized under this
 9 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
 10 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
 11 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
 12 persons to whom unauthorized disclosures were made of all the terms of this Order,
 13 and (d) request such person or persons to execute the "Acknowledgment and
 14 Agreement to Be Bound" that is attached hereto as Exhibit A.

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 16 **PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain
 18 inadvertently produced material is subject to a claim of privilege or other protection,
 19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 21 may be established in an e-discovery order that provides for production without prior
 22 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 23 parties reach an agreement on the effect of disclosure of a communication or
 24 information covered by the attorney-client privilege or work product protection, the
 25 parties may incorporate their agreement in the stipulated protective order submitted to
 26 the court.

27 **12. MISCELLANEOUS**

28 12.1 Right to Further Relief. Nothing in this Order abridges the right of any

1 person to seek its modification by the court in the future.

2 12.2 Right to Assert Other Objections. By stipulating to the entry of this
3 Protective Order no Party waives any right it otherwise would have to object to
4 disclosing or producing any information or item on any ground not addressed in this
5 Stipulated Protective Order. Similarly, no Party waives any right to object on any
6 ground to use in evidence of any of the material covered by this Protective Order.

7 12.3 Filing Protected Material. Without written permission from the
8 Designating Party or a court order secured after appropriate notice to all interested
9 persons, a Party may not file in the public record in this action any Protected
10 Material. A Party that seeks to file under seal any Protected Material must comply
11 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant
12 to a court order authorizing the sealing of the specific Protected Material at issue.
13 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
14 establishing that the
15 Protected Material at issue is privileged, protectable as a trade secret, or otherwise
16 entitled to protection under the law. If a Receiving Party's request to file Protected
17 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
18 the Receiving Party may file the information in the public record pursuant to Civil
19 Local Rule 79-5(e) unless otherwise instructed by the court.

20 **13. FINAL DISPOSITION**

21 Within 60 days after the final disposition of this action, as defined in paragraph
22 4, each Receiving Party must return all Protected Material to the Producing Party or
23 destroy such material. As used in this subdivision, "all Protected Material" includes
24 all copies, abstracts, compilations, summaries, and any other format reproducing or
25 capturing any of the Protected Material. Whether the Protected Material is returned or
26 destroyed, the Receiving Party must submit a written certification to the Producing
27 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
28 deadline that (1) identifies (by category, where appropriate) all the Protected Material

1 that was returned or destroyed and (2) affirms that the Receiving Party has not
2 retained any copies, abstracts, compilations, summaries or any other format
3 reproducing or capturing any of the Protected Material. Notwithstanding this
4 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
5 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
6 deposition and trial exhibits, expert reports, attorney work product, and consultant
7 and expert work product, even if such materials contain Protected Material. Any such
8 archival copies that contain or constitute Protected Material remain subject to this
9 Protective Order as set forth in Section 4 (DURATION).

10 **APPROVED AND SO ORDERED:**

11 DATED: April 11, 2023


12 JUDGE OF THE UNITED STATES DISTRICT
13 COURT